

CLERK OF THE SENATE  
U.S. SENATE  
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II

110TH CONGRESS  
1ST SESSION

# S. 2408

To amend title XVIII of the Social Security Act to require physician utilization of the Medicare electronic prescription drug program.

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## IN THE SENATE OF THE UNITED STATES

DECEMBER 5, 2007

Mr. KERRY (for himself, Mr. ENSIGN, Ms. STABENOW, and Mr. MARTINEZ) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend title XVIII of the Social Security Act to require physician utilization of the Medicare electronic prescription drug program.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Medicare Electronic  
5 Medication and Safety Protection (E-MEDS) Act of  
6 2007”.

7 **SEC. 2. FINDINGS.**

8 Congress finds the following:

1 (1) Patient safety is an important issue and a  
2 priority among patients, providers, insurers, busi-  
3 nesses, and government entities alike.

4 (2) Adverse drug events are defined by the In-  
5 stitute of Medicine as “any injury due to medica-  
6 tion”.

7 (3) According to the Institute of Medicine, more  
8 than 1.5 million preventable adverse drug events  
9 occur every year in the United States.

10 (4) Studies indicate that at least 530,000 pre-  
11 ventable adverse drug events occur each year among  
12 the Medicare population, and cost the Federal Gov-  
13 ernment upwards of \$887,000,000, or \$1,983 per  
14 person.

15 (5) Electronic prescription drug programs, or e-  
16 prescribing, provide for the electronic transmittal of  
17 prescription information from the prescribing health  
18 care provider to the dispensing pharmacy and phar-  
19 macist.

20 (6) Electronic prescribing provides formulary  
21 and coverage information before a prescription is  
22 written to better inform the patient and prescriber  
23 of lower cost options, including generics.

24 (7) E-prescribing can help to eliminate medical  
25 errors, injuries, hospitalizations, and even death that

can result from illegible prescriptions and bad drug interactions, in addition to reducing patient medication non-adherence.

(8) The Institute of Medicine recommends that all physicians create a plan to implement and use e-prescribing technology by 2010.

**SEC. 3. INCENTIVES FOR USE OF E-PRESCRIBING UNDER  
MEDICARE.**

(a) BONUS PAYMENTS.—Section 1833 of the Social Security Act (42 U.S.C. 1395l) is amended by adding at the end the following new subsection:

“(v) INCENTIVE PAYMENTS FOR PHYSICIAN USE OF  
E-PRESCRIBING.—

“(1) ONE-TIME BONUS FOR START-UP COSTS.—

“(A) IN GENERAL.—If the Secretary determines, based upon coding in claims submitted under this part over a duration specified by the Secretary, that a physician meets a threshold volume or proportion (as specified by the Secretary) of claims for physicians’ services for individuals enrolled under this part that—

“(i) are classified (under section 1848) as evaluation and management services;

“(ii) include the making of a prescription that could under law be made using the electronic prescription drug program; and

“(iii) use the electronic prescription drug program for such prescription, the Secretary shall make a payment to the physician, in addition to any other payment under this part, of the amount specified in subparagraph (B). Not more than one payment may be made under this subsection with respect to any physician.

“(B) AMOUNT.—The payment amount under subparagraph (A) shall be, in the case of a physician that meets the conditions of subparagraph (A) for a period that begins during—

“(i) 2008 or 2009, \$2,000;

“(ii) 2010 or 2011, \$1,500; or

“(iii) 2012 or a subsequent year, \$1,000.

“(2) ON-GOING BONUS FOR USE OF E-PRESCRIBING.—

“(A) IN GENERAL.—If the Secretary determines, based upon coding in claims submitted

1 under this part over a period specified by the  
2 Secretary, that a physician uses the electronic  
3 prescription drug program for prescribing at  
4 least a threshold volume or proportion (as spec-  
5 ified by the Secretary) of claims for physicians'  
6 services for individuals enrolled under this part,  
7 in addition to the amount of payment that  
8 would otherwise be made under this part for  
9 physicians' services by the physician that are  
10 classified as evaluation and management serv-  
11 ices under section 1848, there also shall be paid  
12 to the physician an amount equal to 1 percent  
13 of the allowed charges for such services. In ap-  
14 plying the previous sentence, there shall not be  
15 taken into account claims for prescriptions writ-  
16 ten for controlled substances which may not  
17 under law be prescribed using the electronic  
18 prescription drug program.

19 “(B) APPLICATION TO PHYSICIAN SHORT-  
20 AGE BONUSES.—The additional payment under  
21 this paragraph shall be taken into account in  
22 applying subsections (m) and (u).

23 “(3) AUDITING.—Provisions applicable to the  
24 auditing of claims for payment and enforcement of

1 false claims under this part shall apply to claims for  
2 payment under this subsection.

3 “(4) ELECTRONIC PRESCRIPTION DRUG PRO-  
4 GRAM DEFINED.—In this subsection, the term ‘elec-  
5 tronic prescription drug program’ means the pro-  
6 gram established under section 1860D-4(e).”.

7 (b) REQUIREMENT FOR USE OF E-PRESCRIBING.—

8 Section 1848(a) of such Act (42 U.S.C. 1395w-8(a)) is  
9 amended by adding at the end the following new para-  
10 graph:

11 “(5) ADJUSTMENT IN FEE SCHEDULE FOR  
12 FAILURE TO USE E-PRESCRIBING.—

13 “(A) IN GENERAL.—Subject to subpara-  
14 graph (B), effective for physicians’ services fur-  
15 nished on or after January 1, 2011, in the case  
16 of such services—

17 “(i) that are classified as evaluation  
18 and management services under this sec-  
19 tion; and

20 “(ii) in connection with which there  
21 was one or more prescriptions made that  
22 could have been made, but were not all  
23 made, under the electronic prescription  
24 drug program,



the fee schedule amount otherwise applicable under this section shall be reduced by 10 percent.

“(B) WAIVER.—The Secretary may waive the application of subparagraph (A) until January 1, 2012, or January 1, 2013, as specified by the Secretary, in cases of demonstrated hardship or unforeseen circumstances specified by the Secretary.”.

**SEC. 4. REPORTS ON E-PRESCRIBING.**

(a) CMS REPORT.—

(1) IN GENERAL.—Not later than 2 years after the date of the enactment of this Act, the Administrator of the Centers for Medicare & Medicaid Services shall submit to Congress a report on progress on implementing e-prescribing under the Medicare electronic prescription drug program under section 1860D-4(e) of the Social Security Act (42 U.S.C. 1395w-104(e)).

(2) ITEMS INCLUDED.—Such report shall include information on—

(A) the percentage of Medicare physicians that utilize the electronic prescription drug program;



1 (B) the estimated savings resulting from  
2 the use of e-prescribing; and

3 (C) progress on reducing avoidable medical  
4 errors resulting from the use of e-prescribing.

5 (b) GAO REPORT.—

6 (1) IN GENERAL.—Not later than 2 years after  
7 the date of the enactment of this Act, the Com-  
8 troller General of the United States shall submit to  
9 Congress a report on the impact of implementation  
10 of such program on physicians.

11 (2) ITEMS INCLUDED.—Such report shall in-  
12 clude information on—

13 (A) factors influencing the adopting of e-  
14 prescribing by physicians; and

15 (B) the impact of this Act on physicians  
16 practicing in individual or small group practices  
17 and on physicians practicing in rural areas.

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